

REMARKS

Claim Objections

The Examiner has objected to claims 1 and 5 with regard to the claim terminology "TCB cabinet" in that it "should be better defined to clearly and distinctly point out the intended subject matter." *Office Action*, 2.

The Applicants have amended claims 1 and 5 to reflect that the TCB cabinet houses transmission equipment. A TCB cabinet may, in one exemplary embodiment of the present invention, house radio equipment (*i.e.*, transceivers) for placing calls and distribution cards for directing receive signals to the radio equipment. The Applicants believe that a TCB cabinet is otherwise understood by one of ordinary skill in the art as is evidenced by U.S. patent number 6,804,540 to Shepherd et al., which refers to a "transceiver cabinet (TCB) 54." '540:4:62-63.

Further, an applicant may use "any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought." *MPEP* § 2173.01. As a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought, the Applicants believe the Examiner's objection to be overcome. See *In re Swinehart*, 439 F.2d 210 (CCPA 1971).

Claim Rejections—35 U.S.C. § 103

The Examiner has rejected claims 1-8 "as being unpatentable over Besson (US006360106B1) in view of Shepherd et al (US006804540B1)." *Office Action*, 2. The Applicants respectfully traverse.

The Examiner contends that "[e]ach of the antennas [of Besson] realize a sector within the cell that is covered by the base station." *Office Action*, 2-3. Besson, however, fails to disclose the preamble of the Applicant's presently claimed invention wherein base station equipment of a sectorized cell site is reconfigured to 'relieve high call

blocking rates in a first, heavily utilized sector.’ The Applicants respectfully note that “a claim preamble has the import that the claim as a whole suggests for it.” *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620 (Fed. Cir. 1995). Thus, “[i]f the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999). As the preamble of claim 1 provides meaning to the claim—reconfiguring base station equipment to relieve high call blocking rates in a first, heavily utilized sector—Besson (alone or in combination with Shepherd et al.) fails to disclose this particular limitation. See *MPEP* § 2142 (requiring a prior art reference or combination of references to teach or suggest *all* the claim limitations).

A more careful reading of Besson reveals that this particular reference is concerned with performing “monitoring and organization of the transceiver means [of a base station] such that one of these transceivers means is *switched into energy saving mode as soon as it does not supply any communication connections*.” ‘106:Abstract (emphasis added). Besson notes that “lower energy consumption for the base station is possible on the basis of switching into an energy saving mode” as that “[f]urther advantages emerge from a reduced cooling outlay.” ‘106:2:40-42; 2:42-43. In that regard, Besson would actually *inhibit* relieving the high call blocking rates in a first, heavily utilized sector through base station reconfiguration through the shut down or limited operability of low/no-demand transceivers. As such, Besson cannot establish a *prima facie* case of obviousness in that there must be a reasonable expectation of success with regard to the proposed modification or combination. See *In re Merck & Co., Inc.*, 800 F.2d 1091 (Fed. Cir. 1986).

The Examiner appears to rely on Shepherd et al. only for the purpose of disclosing a TCB cabinet. See *Office Action*, 3 (“Besson fails to disclose the use of TCB cabinets”). The Examiner’s rejection and reference to Besson, therefore, is interpreted as suggesting that each and every limitation of claim 1 is found in Besson. As noted above,

however, Besson fails to disclose or allow for modification whereby low-demand equipment may be reconfigured to relieve overload in high-demand sectors. As Besson fails to disclose this limitation as found in the preamble of claim 1 and, further, Besson cannot be modified with any expectation of success to provide such call blocking relief, a *prima facie* case of obviousness does not exist. As "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness," which the Applicants contend does not exist in the present case, "the [A]pplicant[s are] under no obligation to submit evidence of nonobviousness." MPEP § 2142. The Applicant, therefore, respectfully requests that the Examiner's 35 U.S.C. § 103(a) rejection of claim 1 be withdrawn and the claim be allowed.

The Examiner makes a similar rejection with regard to a base station apparatus 'configured to relieve high call blocking rates' as recited in claim 5. See *Office Action*, 5-6. In that regard, claim 5 is allowable for at least the same reasons as claim 1.

Finally, as a dependent claim incorporates by reference all the limitations of the claim from which it depends (see 35 U.S.C. § 112, ¶ 4), claims 2-4 are allowable for at least the same reasons as claim 1 and claims 6-8 are allowable for at least the same reasons as claim 5.

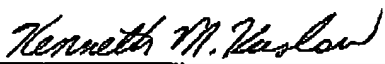
CONCLUSIONS

The Examiner's rejections of independent claims 1 and 5 are overcome in that the cited references fail to teach each and every limitation of the claims. Further, the Besson reference cannot be modified to teach the Applicants' claimed invention with any expectation of success. As such, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection is overcome. The Applicants respectfully request the passage of the present application to allowance. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
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